

RAYMOND NARDO, P.C.
129 Third Street
Mineola, NY 11501
(516)248-2121
raymondnardo@gmail.com
Counsel for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDIRA RODRIGUEZ PERALTA, and
ELIZABETH DEL CARMEN SUMOZA
PERIERA *individually and on behalf of others*
similarly situated

Plaintiffs,

-against-

SHERIDAN CORP. (D/B/A SHERIDAN MARKET),
191 EAST 161 STREET CORP. (D/B/A SHERIDAN
MARKET), 191 E 161 STREET GOURMET DELI
CO. LLC (D/B/A SHERIDAN MARKET), ANDY
NASSER, AYAD NASSER, DERHIM NASSER,
RASHAD SALEH AND IMELDA GJUSHI,

Defendants.

ANSWER

18-CV-12307 (GBD)

Defendants, collectively referred to herein as "Defendants," where not referred to individually by name, by and through counsel, RAYMOND NARDO, ESQ., as and for Defendants' Answer to Plaintiff's Complaint (hereinafter, "the Complaint") in the above-captioned action, hereby answer as follows:

NATURE OF THE ACTION

1. DENY KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraph 1.
2. DENY the truth of the allegations set forth in paragraph 2.
3. DENY the truth of the allegations set forth in paragraph 3.

4. DENY the truth of the allegations set forth in paragraph 4.
5. DENY the truth of the allegations set forth in paragraph 5.
6. DENY the truth of the allegations set forth in paragraph 6.
7. DENY the truth of the allegations set forth in paragraph 7.
8. DENY the truth of the allegations set forth in paragraph 8.
9. DENY the truth of the allegations set forth in paragraph 9 to the extent it calls for an answer.
10. DENY the truth of the allegations set forth in paragraph 10 to the extent it calls for an answer

JURISDICTION AND VENUE

11. DENY the truth of the allegations set forth in paragraph 11 and refer all legal questions to the Court.
12. DENY the truth of the allegations set forth in paragraph 12.

THE PARTIES

Plaintiffs

13. DENY KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraph 13.
14. DENY the truth of the allegations set forth in paragraph 14.
15. DENY KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations set forth in paragraph 15.
16. DENY the truth of the allegations set forth in paragraph 16.

17. DENY the truth of the allegations set forth in paragraph 17 to the extent it calls for an answer.

Defendants

18. DENY the truth of the allegations set forth in paragraph 18.
19. ADMIT the truth of the allegations set forth in paragraph 19.
20. ADMIT the truth of the allegations set forth in paragraph 20.
21. ADMIT the truth of the allegations set forth in paragraph 21.
22. DENY the truth of the allegations set forth in paragraph 22.
23. DENY the truth of the allegations set forth in paragraph 23.
24. DENY the truth of the allegations set forth in paragraph 24.
25. DENY the truth of the allegations set forth in paragraph 25.
26. DENY the truth of the allegations set forth in paragraph 26.

FACTUAL ALLEGATIONS

Defendants Constitute Joint Employers

27. DENY the truth of the allegations set forth in paragraph 27.
28. DENY the truth of the allegations set forth in paragraph 28.
29. DENY the truth of the allegations set forth in paragraph 29.
30. DENY the truth of the allegations set forth in paragraph 30.
31. DENY the truth of the allegations set forth in paragraph 31 and refer all legal questions to the Court.
32. DENY the truth of the allegations set forth in paragraph 32
33. DENY the truth of the allegations set forth in paragraph 33.

34. DENY the truth of the allegations set forth in paragraph 34 and refer all legal questions to the Court.
35. DENY the truth of the allegations set forth in paragraph 35.
36. DENY the truth of the allegations set forth in paragraph 36.
37. DENY the truth of the allegations set forth in paragraph 37.

Individual Plaintiffs

38. DENY the truth of the allegations set forth in paragraph 38.
39. DENY the truth of the allegations set forth in paragraph 39 to the extent it calls for an answer.

Plaintiff Indira Rodriguez Peralta

40. DENY the truth of the allegations set forth in paragraph 40.
41. DENY the truth of the allegations set forth in paragraph 41.
42. DENY the truth of the allegations set forth in paragraph 42.
43. DENY the truth of the allegations set forth in paragraph 43.
44. DENY the truth of the allegations set forth in paragraph 44.
45. DENY the truth of the allegations set forth in paragraph 45.
46. DENY the truth of the allegations set forth in paragraph 46.
47. DENY the truth of the allegations set forth in paragraph 47.
48. DENY the truth of the allegations set forth in paragraph 48.
49. DENY the truth of the allegations set forth in paragraph 49.
50. DENY the truth of the allegations set forth in paragraph 50.
51. DENY the truth of the allegations set forth in paragraph 51.

52. DENY the truth of the allegations set forth in paragraph 52.
53. DENY the truth of the allegations set forth in paragraph 52.
54. DENY the truth of the allegations set forth in paragraph 54.
55. DENY the truth of the allegations set forth in paragraph 55.
56. DENY the truth of the allegations set forth in paragraph 56.

Plaintiff Elizabeth Del Carmen Sumoza Pereira

57. DENY the truth of the allegations set forth in paragraph 57.
58. DENY the truth of the allegations set forth in paragraph 58.
59. DENY the truth of the allegations set forth in paragraph 59.
60. DENY the truth of the allegations set forth in paragraph 60.
61. DENY the truth of the allegations set forth in paragraph 61.
62. DENY the truth of the allegations set forth in paragraph 62.
63. DENY the truth of the allegations set forth in paragraph 63.
64. DENY the truth of the allegations set forth in paragraph 64.
65. DENY the truth of the allegations set forth in paragraph 65.
66. DENY the truth of the allegations set forth in paragraph 66.
67. DENY the truth of the allegations set forth in paragraph 67.
68. DENY the truth of the allegations set forth in paragraph 68.
69. DENY the truth of the allegations set forth in paragraph 69.
70. DENY the truth of the allegations set forth in paragraph 70.
71. DENY the truth of the allegations set forth in paragraph 71.
72. DENY the truth of the allegations set forth in paragraph 72.

73. DENY the truth of the allegations set forth in paragraph 73.
74. DENY the truth of the allegations set forth in paragraph 74.
75. DENY the truth of the allegations set forth in paragraph 75.
76. DENY the truth of the allegations set forth in paragraph 76.
77. DENY the truth of the allegations set forth in paragraph 77.
78. DENY the truth of the allegations set forth in paragraph 78.
79. DENY the truth of the allegations set forth in paragraph 79.
80. DENY the truth of the allegations set forth in paragraph 80.
81. DENY the truth of the allegations set forth in paragraph 81.
82. DENY the truth of the allegations set forth in paragraph 82.
83. DENY the truth of the allegations set forth in paragraph 83.
84. DENY the truth of the allegations set forth in paragraph 84.

FLSA COLLECTIVE ACTION CLAIMS

85. DENY the truth of the allegations set forth in paragraph 85 to the extent it calls for an answer.
86. DENY the truth of the allegations set forth in paragraph 86.
87. DENY the truth of the allegations set forth in paragraph 87.

FIRST CAUSE OF ACTION

88. Defendants repeat and reallege each and every answering paragraph set forth above as though fully forth herein.
89. DENY the truth of the allegations set forth in paragraph 89 and refer all legal questions to the Court.

90. DENY the truth of the allegations set forth in paragraph 90.
91. DENY the truth of the allegations set forth in paragraph 91 and refer all legal questions to the Court.
92. DENY the truth of the allegations set forth in paragraph 92.
93. DENY the truth of the allegations set forth in paragraph 93 and refer all legal questions to the Court.
94. DENY the truth of the allegations set forth in paragraph 94.

SECOND CAUSE OF ACTION

95. Defendants repeat and reallege each and every answering paragraph set forth above as though fully forth herein.
96. DENY the truth of the allegations set forth in paragraph 96.
97. DENY the truth of the allegations set forth in paragraph 97.
98. DENY the truth of the allegations set forth in paragraph 98.

THIRD CAUSE OF ACTION

99. Defendants repeat and reallege each and every answering paragraph set forth above as though fully forth herein.
100. DENY the truth of the allegations set forth in paragraph 100.
101. DENY the truth of the allegations set forth in paragraph 101.
102. DENY the truth of the allegations set forth in paragraph 102.
103. DENY the truth of the allegations set forth in paragraph 103.
104. DENY the truth of the allegations set forth in paragraph 104.

FOURTH CAUSE OF ACTION

105. Defendants repeat and reallege each and every answering paragraph set forth above as though fully forth herein.
106. DENY the truth of the allegations set forth in paragraph 106.
107. DENY the truth of the allegations set forth in paragraph 107 and refer all legal questions to the Court.
108. DENY the truth of the allegations set forth in paragraph 108.

FIFTH CAUSE OF ACTION

109. Defendants repeat and reallege each and every answering paragraph set forth above as though fully forth herein.
110. DENY the truth of the allegations set forth in paragraph 110.
111. DENY the truth of the allegations set forth in paragraph 111.
112. DENY the truth of the allegations set forth in paragraph 112.

SIXTH CAUSE OF ACTION

113. Defendants repeat and reallege each and every answering paragraph set forth above as though fully forth herein.
114. DENY the truth of the allegations set forth in paragraph 114.
115. DENY the truth of the allegations set forth in paragraph 115.

SEVENTH CAUSE OF ACTION

116. The defendant repeats reiterates and realleges each and every answer and denial to the allegations contained in paragraphs of plaintiff's Complaint with the same force and effect as if fully set forth herein at length.

117. DENY the truth of the allegations set forth in paragraph 117.

118. DENY the truth of the allegations set forth in paragraph 118.

EIGHTH CAUSE OF ACTION

119. Defendants repeat and reallege each and every answering paragraph set forth above as though fully forth herein.

120. DENY the truth of the allegations set forth in paragraph 120 and refer all legal questions to the Court.

121. DENY the truth of the allegations set forth in paragraph 120 and refer all legal questions to the Court

122. DENY the truth of the allegations set forth in paragraph 122.

123. DENY the truth of the allegations set forth in paragraph 123.

124. DENY the truth of the allegations set forth in paragraph 124.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

125. Plaintiffs are not entitled to relief as Plaintiff's Complaint fails to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

126. Plaintiffs are not entitled to relief due to unclean hands.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

127. Any and all damages alleged were not "willful" under the NYLL.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

128. Plaintiffs are not entitled to relief because defendants paid plaintiffs for all hours worked.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

129. Plaintiffs are not entitled to relief because defendants were not engaged in “interstate commerce.”

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

130. Plaintiffs are not entitled to relief because defendants were not engaged in the production of goods for commerce.

AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE

131. Plaintiffs’ claims must fail based on the Statute of Limitations and plaintiffs’ failure to exhaust administrative remedies.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

132. Defendants do not owe any wages to Plaintiffs.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

133. Plaintiffs are exempt from the NYLL.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

134. Plaintiffs’ claims are not common enough to sustain a collective or class action.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

135. Plaintiffs’ claims are not typical enough to sustain a collective or class action.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

136. At all times herein, Defendants used good faith in calculating Plaintiff’s compensation.

AS AND FOR AN THIRTEENTH AFFIRMATIVE DEFENSE

137. Defendants are not “employers” under the NYLL.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

138. At all times, Defendants made complete and timely payment to Plaintiffs for all wages due.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

139. At all times Defendants believed, in good faith, that they were not required to provide 195.1 Statements to Plaintiffs.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

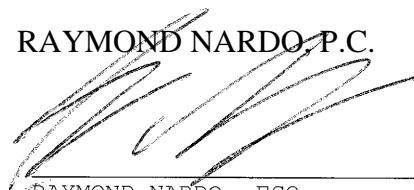
140. At all times Defendants believed, in good faith, that they were not required to provide 195.3 paystubs to Plaintiffs.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

141. Plaintiffs are not similarly situated enough to maintain a class or collective action.

WHEREFORE, Defendants respectfully request that the Court dismiss Plaintiff's Complaint with prejudice and award Defendants costs and disbursements, attorney fees, and such other and further relief as this Honorable Court would deem just, proper and equitable.

Dated: Mineola, NY
March 21, 2019

RAYMOND NARDO, P.C.


RAYMOND NARDO, ESQ.

129 Third Street
Mineola, NY 11501
raymondnardo@gmail.com
(516) 248-2121
Attorney for Plaintiff